STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL POXSON and JOANNE SCOLLARD,

Plaintiffs-Appellees,

v

WAYNE TEACHOUT and LEONI TOWNSHIP,

Defendants-Appellants,

and

ROBERT A. CRAFT, DIANE J. CRAFT, ACCURATE HOME INSPECTION, ROY BAMBACH, MARK EDINGER, and AARDVARK PEST CONTROL,

Defendants.

UNPUBLISHED
June 24, 2003

No. 234387
Jackson Circuit Court
LC No. 00-003885-CK

Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Defendants Wayne Teachout and Leoni Township appeal by leave granted the trial court's order denying their motion for summary disposition pursuant to MCR 2.116(C)(7) and (8). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Plaintiffs purchased a home from defendants Robert A. Craft and Diane J. Craft. The home is located within the Township's boundaries. The Crafts supplied plaintiffs with a seller's disclosure statement containing various representations regarding the condition of the home. Prior to purchasing the home, plaintiffs arranged for it to be inspected. After the purchase was completed, plaintiffs discovered numerous defects in the home. An inspection determined that the home was uninhabitable. Plaintiffs filed suit alleging various claims against numerous defendants. One count alleged that Teachout (a building inspector for the Township) and the Township intentionally failed to perform their duties in reckless disregard of the consequences, that such conduct amounted to gross negligence, that defendants were grossly negligent in the performance of their duties, and that plaintiffs suffered damages as a result.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(7) and (8), arguing that the Township was entitled to governmental immunity because its performance of building inspections was a governmental function and that Teachout was immune from liability because the allegations against him did not amount to gross negligence. Alternatively, defendants argued that even if Teachout's conduct was grossly negligent, plaintiffs could not establish that it was the proximate cause of their damages.[1] The trial court denied defendants' motion, stating that questions of fact existed that should be resolved by the trier of fact.

II. STANDARD OF REVIEW

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

III. ANALYSIS

Defendants argue that the trial court erred by denying their motion for summary disposition. We agree and reverse the trial court's decision.

A governmental agency is immune from tort liability while engaging in a governmental function, unless an exception applies. MCL 691.1407. A "governmental function" is an activity "expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(f); *Coleman v Kootsillas*, 456 Mich 615, 619; 575 NW2d 527 (1998). There is no intentional tort exception to governmental immunity where the tort was committed within the scope of a governmental function. *Smith v Dep't of Public Health*, 428 Mich 540, 544; 410 NW2d 749 (1987).

Governmental employees are immune from liability for injuries they cause during the course of their employment if they are acting within the scope of their authority, if they are engaged in the discharge of a governmental function, and if their "conduct does not amount to gross negligence that is the proximate cause of the injury or damage." To be the proximate cause of an injury, the gross negligence must be "the one most immediate, efficient, and direct cause" preceding the injury. *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000). Evidence of ordinary negligence does not create a question of fact regarding gross negligence. *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817 (1999). The gross negligence exception to governmental immunity applies to individuals but not to governmental agencies. *Gracey v Wayne County Clerk*, 213 Mich App 412, 420-421; 540 NW2d 710 (1995), overruled on other grds in *American Transmissions, Inc v Att'y General*, 454 Mich 135, 141-143; 560 NW2d 50 (1997).

MCL 41.181 authorizes a township to adopt ordinances regulating the public health, safety, and welfare of persons and property. We find that the Township's operation of a building inspection program constituted a governmental function. MCL 691.1401(f); *Coleman*, *supra*. Plaintiffs' assertion that the Township's failure to perform its duties in a competent manner brings its conduct within the intentional tort exception to governmental immunity is without

[1] Defendants also argued that plaintiffs' action against Teachout was barred under the public duty doctrine. Defendants have abandoned that argument on appeal.

merit. *Smith*, *supra*. An agency's performance of its duties in a negligent or grossly negligent manner does not result in a forfeiture of governmental immunity. Tort liability may be imposed only if an agency engages in an ultra vires activity. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 97; 494 NW2d 791 (1992); *Gracey*, *supra*.

Liability could arise if Teachout's conduct constituted gross negligence. MCL 691.1407(2)(c). Plaintiffs' complaint alleged in a conclusory manner that Teachout performed his duties in a grossly negligent manner. In their response to defendants' motion for summary disposition, plaintiffs cited excerpts from Teachout's deposition testimony that demonstrated he did not perform a final inspection on the property because he determined that such an inspection would be premature and that he did not sign the certificate of occupancy. We find that reasonable minds could not disagree that the allegations against Teachout did not rise to the level of gross negligence. Gross negligence is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2)(c). At most, the allegations amounted to a claim that Teachout did a poor job of conducting the inspection process. Evidence of ordinary negligence does not raise questions of fact regarding gross negligence. *Maiden*, *supra*.

Finally, we conclude as a matter of law that Teachout's conduct did not constitute the proximate cause of plaintiffs' damages. No evidence showed that plaintiffs relied on Teachout's actions in deciding to purchase the property. Plaintiffs retained inspectors to inspect the property before they purchased it. They named numerous parties as defendant and cited various claims against these parties. The trial court erred by failing to conclude that Teachout's actions were not "the" proximate cause of plaintiffs' damages. *Robinson*, *supra*.

Plaintiffs' claims against the Township were barred by governmental immunity. MCL 691.1401(f); *Coleman*, *supra*; *Smith*, *supra*. Teachout's conduct did not constitute gross negligence. MCL 691.1407(2)(c). Defendants were entitled to summary disposition.

Reversed.

/s/ David H. Sawyer
/s/ Patrick M. Meter
/s/ Bill Schuette